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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,973	07/11/2003	Falk Schaal	2679	4052
7590	01/26/2005		EXAMINER	
STRIKER, STRIKER & STENBY 103 East Neck Road Huntington, NY 11743			MEREK, JOSEPH C	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/617,973	SCHAAL, FALK
	Examiner Joseph C. Merek	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 01 November 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) 2-5 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 6-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/3/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Election/Restrictions***

Claims 2-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 11/1/04.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, and 8 are rejected under 35 U.S.C. 102(b) as being by Reilly (US 1,957,293). Regarding claim 1, see Figs. 1-4, where the pot shaped receptacle is 10, a holding ring is 15, the guideway is the inner surface of 10 which guides the ring between a raised and a lowered position. The limitation "Pot shaped" does not require any structure that is not in the reference. Pot can be any shape. Item 15 in the reference is annular and therefore satisfies the ring limitation. Moreover, it rings the interior surface of the pot shaped receptacle 10. Regarding claim 6, the cover is 13, which has control projections 34 which are in the control tracks 33. The control tracks are curved at their ends. Regarding claim 7, the control track arrangement is such that an opening movement of the cover is coupled with a lifting of the ring and a closing movement of

the cover is coupled with a lowering of the ring. Regarding claim 8, see the above discussions. The container is capable of holding a beverage receptacle.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Lehner (US 5,342,009). Regarding claim 1, see Figs. 1-5, where the ring is 19, the pot shaped receptacle is 6, and the guideway is 26. The guideway guides the ring 19 between a raised position as seen in Fig. 1 to a lowered position in Fig. 2.

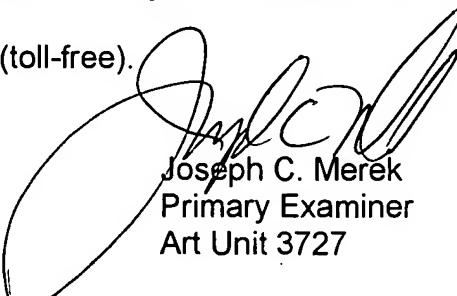
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mitchell (US 1,985,615) is cited for teaching a container with a pivoted lid and a ring where the container is intended to hold a bottle. Gehring et al (US 6,427,960) and Okazaki (US 5,190,259) are both cited for teaching vehicle cup holders with rings. Emerson (US 3,236,588) and Lindenbloom et al (US 2,031,115) are both cited for teaching containers similar to Reilly that are round in shape.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727